

IT 95-67

Tax Type: INCOME TAX

Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )   Docket No.  
OF THE STATE OF ILLINOIS      )   SSN  
      v.                        )  
XXXXXX                        )   John E. White,  
      Taxpayer                  )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before the Department of Revenue's ("Department's") Office of Administrative Hearings as the result of XXXXX's response to a Notice of Deficiency ("NOD"). The basis of the NOD was the Department's determination that taxpayer1 failed to report to the Department a final federal change in adjusted gross income for the taxable years ending 12/31/85 and 12/31/86. At issue is whether the tax proposed to be assessed against taxpayer was discharged in bankruptcy.

FINDINGS OF FACT:

1. On January 23, 1992, the Department issued a Notice of Proposed Adjustment to taxpayer based on adjustments made to taxpayer's federal adjusted gross income for the taxable years ending 12/31/85 and 12/31/86. See Notice of Proposed Adjustment ("NPA"). See Dept. File Ex. No. 1.

2. On 10/06/92 taxpayer filed a petition in bankruptcy in the United States Bankruptcy Court for the Central District of Illinois, pursuant to which a discharge order was issued by the Honorable Larry Leeson on 2/11/93. See Discharge Order, Dept. File Ex. No 2.

3. Taxpayer named the Department as an unsecured creditor in a schedule filed in bankruptcy court, and identified as the amount of the Department's claim the \$783.00 which had been proposed in the Department's

NPA. Id. at 4.

4. On February 11, 1993, the Department issued the NOD against taxpayer. See NOD, Dept. File Ex. No. 3.

5. On or about 11/4/93, taxpayer responded to the NOD, indicating that the tax proposed was discharged in bankruptcy. See Protest, Dept. File Ex. No. 4.

6. On 1/6/94, the Department notified taxpayer that "a tax liability is not subject to the bankruptcy discharge if a return is required to be filed but is not filed. Our Notice of Deficiency was issued because an IL-1040-X which was required to be filed, pursuant to Section 506 (b) of the Illinois Income Tax Act, to report the results of a federal income tax examination was not filed." See 1/6/94 letter, Dept. File Ex. No. 5.

7. On 1/11/94, taxpayer wrote to the Department that he was tendering copies of bankruptcy documents instead of filing a IL-1040X. See 1/11/94 letter, Dept. File Ex. No. 2.

8. Taxpayer did not request a hearing. See Dept. File Ex. Nos. 2, 4.

CONCLUSIONS OF LAW: Pursuant to 904(a) of the IITA, a Notice of Deficiency is prima facie evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a). Any person required to file an Illinois income tax return is required to notify the Department, within the time frame set by statute, of any final federal change which affects the computation of such person's base income. 35 ILCS 5/506(b). In this matter, taxpayer failed to present any evidence to rebut the prima facie evidence of the Department.

With regard to whether the tax proposed in the NOD was discharged in bankruptcy, the law is settled in both federal bankruptcy courts and Illinois courts. The failure to file amended State income tax returns, which are required to be filed, renders nondischargeable the tax debt incurred as a result of that failure. *Rosenfeld v. Department of Revenue*,

205 Ill. App. 3d 427, 430 ((1st Dist. 1990) (citing with approval In re Haywood, 62 Bankr. 482 (Bankr. N.D. Ill. 1986)). The tax proposed by the Department's NOD is based on taxpayer's failure to file amended returns reporting the finalized federal changes to his adjusted gross income. The Notice of Proposed Adjustment gave taxpayer actual notice of his obligation to file such amended returns, and there is no evidence contained in the record that the amended returns were filed by taxpayer. Accordingly, Taxpayer is subject to additional tax.

In addition, the NOD proposed the assessment of a penalty for Taxpayer's failure to pay the entire tax liability by the due date. 35 ILCS 5/1005. Penalties imposed under that provision, however, shall not apply if the failure to pay the tax when due was due to reasonable cause. 35 ILCS 735/3-8. The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis. See Rorabaugh v. United States, 611 F.2d 211 (7th Cir. 1979); Dumont Ventilation Co. v. Dept. of Revenue, 99 Ill. App. 3d 263 (3d Dist. 1987). Here, taxpayer failed to tender any evidence showing reasonable cause for his failure to report the change or pay the tax. I, therefore, recommend that the Director finalize the Notice of Deficiency as issued.

Administrative Law Judge

Date Entered

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1. Although this matter is captioned under the names of the joint filers of the Illinois 1040 income tax return, I shall refer to the taxpayers throughout this decision using the third person singular.